

Research Article

Mid-term Replacement Members of the Regional Representative Council of Bandar Lampung City Based on the Siyasaah Syar'iyah Perspective

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Abstract.

Representative institutions currently in office can have their positions replaced by other members with conditions in accordance with applicable laws and regulations. This mechanism is called mid-term replacement (PAW). In its implementation, the PAW mechanism is a positive and effective means of maximizing the performance of representative institutions, but there are also various problems that arise. Replacing members of representative institutions in the middle of their term of office will deviate the objectives of the general elections held. Apart from that, disputes between members of representative institutions and their supporting parties cannot be avoided due to inappropriate processes in implementing the mechanisms. This study is a qualitative field research which does not require an in-depth knowledge of the literature used or specific abilities on the part of the research party. It is presented in the form of descriptive analysis where the data generated from primary and secondary data sources are described and provide a picture that matches the reality in the field. The results of this research show that the PAW of the Bandar Lampung City DPRD in 2019-2024 has occurred three times and is in accordance with the rules stipulated in Law Number 17 of 2014 concerning the MPR, DPR, DPD, and DPRD, which regulate PAW. In implementing PAW, the Bandar Lampung City DPRD has carried out its duties well in accordance with the law and Syar'iyah principles, so that the implementation of PAW does not conflict and is carried out well.

Keywords: mid-term replacement, DPRD, Siyasaah Syar'iyah

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1. Introduction

Mid-term replacement (PAW) of DPR members is generally also called a recall. Etymologically, the word recall in English has various meanings. As according to Peter Salim in (The Contemporary English-Indonesia), namely remembering, withdrawing or canceling. Interim replacement (PAW) is defined as the process of transferring or replacing members of the DPR with the parent organization, namely a political party.[1]



Politics is basically a phenomenon related to humans who always live in society. By nature he is a social creature who always lives dynamically and develops. That's why politics is always a symptom that manifests human beings in the context of their development process.[2] Sovereignty in the hands of the people is firmly accepted and implemented by Indonesia in accordance with Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). It is entrusted to the people and implemented in accordance with constitution. This outcome requires democratic parliamentary elections to exercise popular sovereignty. Procedural democracy is a basic general election.[3] In fact, the democratic system has become a model for discourse and politics not only in Indonesia but also in the world.[4]

The implementation of the democratic system in Indonesia is a typical democracy with the presence of representative institutions such as the DPR. The DPD Regional Representative Council and the Representative Council provide space for the people when parliamentary elections are held to elect representatives who are the people's representatives to fight for their interests. In parliamentary elections, political parties take part in parliamentary elections and cannot be separated from political parties (Article 22E of the 1945 Constitution of the Republic of Indonesia).

Indonesia could become a political issue if it implements representative democracy. The elected representatives will have two interests in the general election, namely citizens who elect legislative representatives. Therefore, legislative members are obliged to represent and uphold the interests they represent. Legislative members, on the other hand, cannot be separated from members as party implementers who support maintaining and upholding the interests of political parties. Therefore, legislative members stand in two different positions, on the one hand as representatives of the people and on the other hand as representatives of the legislative party.[5] Therefore, conflicts of interest often occur in this context. In fact, the relationship with legislative members is stronger than the relationship between legislative members and the people who represent them. The Temporary Representation Scheme (PAW) is a form of strengthening relations between parliament members and their political parties. PAW is basically a means of managing legislative members. However, the problem is, political parties are empowered to run PAW.

The constitutional juridical basis for dismissal of members of the DPR is regulated in Article 22B of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the

Republic of Indonesia), which reads “Members of the People’s Representative Council can be dismissed from their positions, the terms and conditions of which are regulated by law.” The organic instruments are regulated in Law Number 17 of 2014 concerning the MPR, DPR, DPD and DPRD (UU MD3) and Law Number 2 of 2008 concerning Political Parties as amended by Law Number 2 of 2011 concerning amendments to the Law -Law Number 2 of 2008 concerning Political Parties (UU Political Parties). Various legal instruments governing the dismissal and mid-term replacement of DPR members show that political parties have a large role in them.

The existence of political parties is a form of institution as a form of free expression of ideas, thoughts, views and beliefs in a democratic society. Therefore, the existence of political parties is closely related to the principles of freedom of expression, freedom of association and assembly.[6] Political parties can propose the dismissal of members of the DPR, even for certain reasons as stated in Article 240 paragraph (1) of the MD3 Law, the leadership of the political party is the only party who can propose such dismissal. Regarding regulations like this, it would not be wrong to say that political parties are in control of the recall of their members who sit in parliament. A recall certainly has the potential to distort the sovereignty of the people and the sovereignty of political parties.[7]

The development of historical writing increasingly focuses on the people who hold power. Therefore, the biographies of the caliphs and high-ranking officials and other influential people also developed. Moreover, in the early days of Islamic development, society seemed to be very dependent on the leadership of a figure. The progress and decline of society is seen as the work of individual leadership.[8]

Muslims can be torn apart by various collective behaviors that tend to conflict. In the past, people were in opposing camps, because there were no similarities in views. In other words, the people have lost their political identity. This article was written so that people understand their own identity, and for people outside of Islam and policy makers to know the political desires of Islam.[9]

General elections are one of the problems or cases that occur today in various countries. In short, it can be simply understood that elections are the return of the right to vote to the people or people in electing representatives who will represent them to speak on behalf of the people, demand their rights and defend them from things that are detrimental to them. as is the case in several countries, even though the majority of the people’s representatives represent certain groups or parties, they have the authority

to communicate with the authorities on behalf of their groups and parties or on behalf of the people themselves. This simple definition is related to general election issues and will be our study from a syar'i perspective.[10]

The participation of the ummah in this election actually contains another problem, for example: why do fiqh experts say: "Whoever gets approval from the Muslims will be appointed as imam or leader of the Muslims," the answer is: because this ummah is obliged to carry out the laws sharia, while direct implementation (without an official institution) is not possible. Moreover, with a very large number of people, it is based on the concept of representation and based on the view that people who want to enforce rights do not have to do it directly, but may be delegated to others or through their representatives. then, the people elect that person (who gets approval) to be the caliph or leader who will represent them in carrying out this obligation.[11]

The Regional People's Representative Council (DPRD) of the city of Bandar Lampung is a unicameral legislative institution in parliamentary elections located in the city of Bandar Lampung, Lampung province. The Bandar Lampung city DPRD has 50 members spread across 10 political parties, with the majority of votes won by the Indonesian Democratic Party of Struggle.[12] Mid-term replacement (PAW) Bandar Lampung DPRD officially inaugurated Hermawan as a member of Bandar Lampung DPRD, as mid-term replacement (PAW) for the 2019-2022 term of office, replacing Achmad Riza who has passed away. This inauguration was led by Deputy Chairman III of the Bandar Lampung DPRD Edison Hadjar from the National Mandate Party (PAN) faction and Deputy Chairman I Aderly from the Gerindra Party faction.[13] Based on the background of the problem above, this paper aims to analyze the mid-term replacement (Paw) of members of the Bandar Lampung City Regional People's Representative Council and review it from the Siyasah Syar'iyah perspective.

2. Methods

This research method uses field research, namely systematic observation and recording of the phenomena being investigated.[14] This observation is used to complement and strengthen the data obtained. Meanwhile, data collection is obtained from observations to see facts in the field. Based on its nature, this research is qualitative research that is descriptive analysis, namely research that aims to describe and analyze carefully in order to obtain results as conclusions

3. Results and Discussion

3.1. Implementation of mid-term replacement (PAW) of the Bandar Lampung City Regional People's Representative Council (DPRD)

Mid-term replacement (PAW) in political party terms is often referred to as political party recall rights, namely the right to recall members of parliament who are elected through the list of candidates submitted. Recall is generally understood to be the recall of a member of the DPR to be dismissed and therefore replaced with another member before the end of the term of office of the recalled DPRD member. Meanwhile, a political party is an association of a number of citizens who are members of a unit with a specific goal.[15]

The recall rights of political parties are regulated in Article 239 paragraph (2) letters d g and h of Law Number 2 of 2018 concerning amendments to Law Number 17 of 2014 concerning the MPR, DPR, DPD and DPRD. Apart from that, political parties' recall rights are also regulated in Article 12 letters g and h of Law Number 2 of 2011 concerning amendments to Law Number 2 of 2008 concerning Political Parties.

The right to mid-term replacement (PAW) is defined by a number of experts, one of which is according to Moh. Isnaeni said: that mid-term replacement (PAW) is generally a “democles sword” for every member of the DPR.[16] With the right of recall, DPR members receive instructions and direction from their faction leaders rather than taking responsibility for their activities. Carrying out high levels of activity without the approval of the faction leadership can be a fatal mistake that can result in recall. Therefore, for the security of the membership, it is better to wait for what the faction leader has instructed.[17]

Mid-term replacement for DPR members (PAW) is not carried out upon dismissal, but through established legal rules and mechanisms. In this case Law Number 22 of 2003 concerning the composition and position of the MPR, DPR, DPD and DPRD. Meanwhile, its operational implementation is described in detail in government regulation Number 25 of 2004 concerning guidelines for preparing DPRD Rules of Procedure as amended by Government Regulation Number 53 of 2005 concerning Amendments to Government Regulation Number 25 of 2004. In addition to the statutory regulations as mentioned above, the mechanism (PAW) is also regulated in the Minister of Home

Affairs Regulation contained in SK No.161.74-55/2008 dated 8 February 2008 regarding the Official Dismissal and Appointment of Mid-Term Replacement (PAW).[18]

The existence of political party dispute resolution arrangements can be understood to mean that recall is an instrument to control political party members who occupy the DPRD so that they can carry out their duties in accordance with statutory regulations as well as the interests of their political parties and still prioritize the interests of the community. DPRD members cannot be dismissed if they are still carrying out their duties in accordance with existing procedures.[19]

According to the Chairman of the Regional People's Representative Council (DPRD) of the city of Bandar Lampung, H. Wiyadi, mid-term replacement (PAW) is regulated by the KPU, namely the general election law, which is then regulated again by KPU regulations which require that mid-term replacement be carried out if the member of the DPRD permanently disabled (died), resigned and also convicted. So this is the basis that causes mid-term replacement to occur automatically based on the law, or during the implementation of his term of office there are actions that are contrary to the law and DPRD regulations so that he gets sanctions from the party and is terminated by the party. Then it is also regulated in the regulations that mid-term replacement (PAW) can be carried out if the honorary body of the People's Representative Council (DPRD) determines that a member of the DPRD is unable to carry out his duties properly. One proof of bad behavior is not attending plenary meetings six times in a row without a clear reason. Then the honorary body can recommend mid-term replacement to members of the council.[20]

According to the Chairman of the City Honorary Board, H. Agusman Arief, he explained that DPRD councilors/members cannot be dismissed indefinitely in connection with their statements in official plenary forums, official DPRD apparatus forums or official forums in their capacity as DPRD members. If he expresses an opinion that is considered contrary to his party but in his capacity as a member of the DPRD or expressed it in a plenary meeting, he cannot be prosecuted.[21]

In the 2019-2024 period, the Regional People's Representative Council (DPRD) of Bandar Lampung city carried out mid-term replacement (PAW) which occurred up to 3 times. First, mid-term replacement due to the death of the late Ahmad Riza, who was replaced from the Gerindra faction, namely Hermawan, on September 9 2021. Second, mid-term replacement (PAW) in the name of Naldi Rinara S. Riza because the person concerned is a candidate for Deputy Regent. automatically had to resign from the DPRD

who was replaced by Sudibyo Putra from the Nasdem party faction which was carried out on February 25 2021. Third, mid-term replacement (PAW) in the name of Pandu Kesuma Dewangsa from the Nation Development faction who was replaced by Andika Jaya Kusuma because he was elected as deputy Regent of South Lampung.

Mid-term replacement (PAW) cannot be carried out if you do not meet the requirements, namely you are not permanently disabled (still alive), have not committed a criminal act and have not been dismissed. If these three are fulfilled then no one can dismiss a member. The Mid-term replacement (PAW) mechanism is regulated in Law Number 27 of 2009 concerning the MPR, DPR, DPD and DPRD. Mid-term replacement (PAW) consists of two categories, namely Permanent Mid-term replacement (PAW) and Temporary Mid-term replacement. There are several stages in fixed Mid-term replacement (PAW), namely;

First, the Submission Stage. Dismissal of a member by reason of death, resignation, or being declared guilty based on a court decision and punishable by a sentence of 5 (years) or more, proposed by the political party in accordance with statutory regulations, being dismissed as a member of a political party in accordance with statutory regulations, and becoming a member of another political party is proposed by the leadership of the political party to the leadership of the DPR with a copy to the president.

Second, Investigation and Verification Stages. Dismissal of members on the grounds of being unable to carry out their duties continuously or being unable to act as a member for 3 (three) consecutive months without any explanation, violating the code of ethics/oath of office, not attending meetings which are part of the DPRD's duties and obligations for 6 (six) times in a row without a valid reason, no longer fulfills the requirements as a member candidate in accordance with the provisions of the law regarding the general election of members as regulated in the law, carried out after the results of the investigation and verification that have been carried out stated in the decision of the DPRD Honorary Board regarding complaints from DPRD leadership, the public and/or voters.

Third, Implementation of Investigation and Verification. The DPR Honorary Body can request assistance from independent experts. Further provisions regarding procedures for investigation, verification and decision making by the DPR Honorary Body are regulated in DPR regulations concerning procedures for the Honorary Body.

Fourth, Reposition of DPRD Members Post Mid-term replacement (PAW). The provisions are that members who resign from time to time are replaced by prospective members who receive the most votes next in the ranking list of votes from the same political party in the same electoral district. Meanwhile, the terms of office for mid-term replacement continue the remaining positions of the previously replaced members.

Fifth, Submission of Mid-term replacement (PAW) for DPRD members. The DPRD leadership conveys the names of members who have been temporarily dismissed and asks for the names of interim replacement candidates to the KPU, then the KPU submits the names of interim replacement candidates to the DPRD leadership. This is in accordance with Agusman's statement as Chairman of the Honorary Board of the Bandar Lampung City DPRD as follows.

The Mid-term replacement (PAW) mechanism is regulated in the Election Law and PKPU as well as PP no. 16 of 2010 concerning Guidelines for Preparing DPRD Regulations regarding DPRD rules and regulations. When you have met the requirements to be dismissed, the next step is for the party and then the DPR to send a letter to the KPU to find a replacement, namely the person after the serial number below. After verification and the person is still a member of the party, he is then proposed by the KPU and returned to the DPRD. And from this basis it goes back to the KPU to be ratified by the city government, then the DPRD submits it again to the provincial government to be submitted as an interim replacement and given the dismissal of those who are dismissed and the inauguration of members to those who are dismissed and the inauguration of members to those who replace them.[22]

Mid-term replacement (PAW) in the Bandar Lampung City DPRD has been carried out in accordance with applicable regulations because the first person concerned has died and then the mechanism is followed or implemented, then the second is to run for deputy regent and resign, and the third also became deputy regent so he resigned. In accordance with this mechanism, it is then processed by the DPRD, KPU and the mayoral government, then continued to the provincial government in accordance with the existing mechanism. Poppy Asih Wulandari also said that Mid-term replacement (PAW) is a system or rule that has been contained in the General Election Law and KPU regulations and included in the guidance regulations PP 16 of 2018 concerning guidelines for preparing DPRD rules and regulations and then in break down again into the DPRD's rules and regulations so that there are rules.[23]

The procedure for submitting a mid-term replacement is as follows.

- 3.1.1. PAW proposal letter from the Governor to the Minister of Home Affairs
- 3.1.2. Minister of Home Affairs Cq. The Directorate General of Regional Autonomy receives and reviews proposals from the Governor.
- 3.1.3. The process of reviewing the legal aspects at the law firm, and if it is appropriate, continues with the request for the signature of the Minister of Home Affairs
- 3.1.4. A copy of the Decree of the Minister of Home Affairs regarding the inauguration of PAW members of the Provincial DPRD which has been signed by the Minister of Home Affairs is submitted to the Governor.

Based on the results of the author's analysis in the 2019-2024 period in the Bandar Lampung DPRD, mid-term replacement (PAW) has occurred three times.

First, Mid-term replacement (PAW) due to the death of the late Achmad Riza who was replaced from the Gerindra faction, namely Hermawan. This inauguration was carried out at a special plenary meeting of the Bandar Lampung DPRD. The inauguration was led by deputy chairman III of the Bandar Lampung DPRD Edison Hadjar from the National Mandate Fraction (PAN) and deputy chairman I Aderly from the Gerindra Party Fraction. After being inaugurated, Hermawan was asked to adapt as a people's representative and be serious about fighting for the aspirations of the people in his constituency.

Second, mid-term replacement (PAW) in the name of Naldi Rinara S. Riza because the person concerned had become a candidate for Deputy Regent who automatically had to resign as a member of the DPRD and was replaced by Sudibyo Putra from the Nasdem Party faction. Sudibyo Putra was officially appointed as a member of the Bandar Lampung City Regional People's Representative Council (DPRD). The Nasdem Party politician was appointed as a member of the DPRD in the mid-term replacement (PAW) process. The inauguration is to fill the vacant seat of one member of the Bandar Lampung City DPRD in the name of Naldi Rinara who resigned after declaring his candidacy in the 2020 Pesawaran regional head election (Pilkada). This mid-term replacement (PAW) is in accordance with Law Number 23 of 2014 concerning The Regional Government (Pemda) regulates the dismissal and appointment of PAW members of the DPRD.

The third from the United National Development Party (PBB) faction was Pandu Kesuma Dewangsa who was replaced by Andika Jaya Kesuma from the United Development Party (PPP) faction. The PAW inauguration replaced Pandu Kesuma Dewangsa who was elected as Deputy Regent of South Lampung in the 2020 regional elections.

Based on the results of interviews with the Regional People's Representative Council (DPRD) of Bandar Lampung City, council members / DPRD members cannot be dismissed temporarily in connection with their statements in official plenary forums, official forums for DPRD equipment or official forums in their capacity. as a member of the DPRD. If he expresses an opinion that is contrary to his party but is still in his capacity as a member or conveys it through a plenary meeting, this cannot be prosecuted.

The right to recall is not entirely a political arbitrariness because if a party wants to recall its members it must comply with existing laws and regulations as stated in article 16 paragraph (3) of Law Number 2 of 2011 concerning amendments to Law Number 2 of 2011 2008 concerning Political Parties. Apart from that, before a political party recalls its members, it is necessary to know that in a recall by a political party there is room for DPRD members to seek justice for the use of the political party's right to recall against them to be resolved, either through legitimation or non-legitimacy efforts. This is in accordance with articles 32 and 33 of Law Number 2 of 2011 concerning amendments to Law Number 2 of 2008 concerning political parties.

Mid-term replacement (PAW) is regulated by the KPU, namely the general election law, then regulated again by KPU regulations which require mid-term replacement to be carried out if a member of the DPRD is permanently absent (passes away), resigns or is also convicted. So this is the basis that causes PAW to occur automatically based on the law or during the implementation of its term of office there are actions that are contrary to the law and DPRD regulations so that it gets sanctions from the party and is terminated by the party. Then it is also regulated in the PAW rules that it can be carried out by the DPRD's honorary body if a member cannot carry out their duties properly. One of them is not attending plenary meetings six times in a row without a clear reason, then the honorary body can recommend PAW to members of the council.

3.2. Mid-term replacement (PAW) in the middle of the term of office according to Siyasah Syar'iyah

Siyâsah syar'îyyah is defined as policy provisions for managing state matters based on sharia. Khallaf formulated siyâsah syar'îyyah as: Management of general problems for the Islamic government which guarantees the creation of benefits and avoids harm to the Islamic community, without contradicting the provisions of Islamic law and general principles, even though it is not in line with the opinions of mujtahid scholars.[24]

In the history of Islamic politics, deliberation is a decision-making mechanism carried out by the Prophet Muhammad SAW and the caliphs who followed him. The institution that conducted deliberations at that time was the *Ahl al-hall wa al-'aqd* institution which had the task of assisting the caliph in formulating policies as well as being a place for consultations with the caliphs to determine who the next successor would be.[25]

Related to this, the *Ahl al-hall wa al-'aqd* is an institution used in the history of the Islamic Caliphate, whereas to compare the *Ahl al-hall wa al-'aqd* with the DPR/DPRD, it is necessary *ijtihad* method; namely, *qiyas* is a method of equating *ushul* (basic things) with *furu'* (new things) to be used as a legal basis, that basically *Ahl al-hall wa al-'aqd* is an institution that regulates or leads/regulates the government according to deliberation. caliphate, then the author's perception of its role and function is in accordance with the history of Islamic politics during the time of the Rashidun khulafa'ar.[26]

Mid-term replacement (PAW) carried out in the Bandar Lampung DPRD in the 2019-2024 period by the chairman of the Bandar Lampung City DPRD on behalf of Naldi Rinara from the Nasdem party who is running as a candidate for deputy Regent of Pesawaran Regency and Pandu Kesuma Dewangsa who is running as a deputy candidate The Regent of South Lampung and Hermawan replaced Achmad Riza who died at a special plenary meeting of the Bandar Lampung City DPRD.

The policy that has been taken to implement Mid-Term Replacement (PAW) which is motivated by death and someone resigning because they have participated in the Regional Head Election (Pilkada) is a correct action and decision and does not conflict with the law. In Law Number 7 of 2017 concerning General Elections article 426 paragraph (1) states:

Replacement of elected candidates for members of the DPR, DPD, Provincial DPRD and Regency/City DPRD is carried out if the selected candidate concerned:

3.2.1. Die;

3.2.2. Resign;

3.2.3. No longer fulfill the requirements to be a member of the DPR, DPD, Provincial DPRD and Regency/City DPRD; or

3.2.4. Proven to have committed an election crime in the form of money politics or falsifying documents based on a court decision that has permanent legal force.

In determining benefits, Islam requires the ruler to always consult with the people and their followers. Because Islam really emphasizes that the spirit of deliberation is the dominant spirit in political life in society. The practice of deliberation was the lifestyle of the Prophet Muhammad SAW himself in running his government.

Since the reign of Caliph Abu Bakar, all problems related to the state and the benefit of the people, if they did not find a solution in the Al-Quran and hadith, were resolved through deliberation. If they all agree on a decision, then he decides the matter according to the results of the deliberation. Likewise, during the reign of Umar bin Khattab, he had special people from *ulil amri* or known as *Ahl Al-hall Wa Al-Aqdi* to carry out deliberations to resolve problems related to the state and the benefit of the people.

Based on the results of the author's analysis, the PAW that has been carried out by the Regional People's Representative Council (DPRD) of Bandar Lampung City has been carried out well and does not conflict with Islamic law or legislation, thus the implementation of the Mid-term replacement (PAW) of the Regional People's Representative Council (DPRD) is in accordance with or in line with the principles of *Al-hall Wa Al-aqdi*.

4. Conclusion

Based on the results of research and discussions that have been carried out regarding several conclusions from research on Mid-term replacement (PAW) of Members of the Regional People's Representative Council of Bandar Lampung City from the *Siyasah Syar'iyah* Perspective, the author can conclude that the implementation of Mid-term replacement (PAW) is in the middle The term of office in the Regional People's Representative Council (DPRD) of Bandar Lampung City in 2019-2024 has occurred three times and is in accordance with the rules stipulated in Law Number 17 of 2014 concerning MPR, DPR, DPD and DPRD, Law Number 23 of 2014 concerning Regional Government, while its implementation is described in General Election Commission Regulation Number 6 of 2017 concerning Mid-term replacement (PAW) for Members of the MPR, DPR, DPD and Provincial DPRD and Regency/City DPRD. The implementation of Mid-term replacement (PAW) in the middle of the term of office in *siyasah syar'iyah* and in Islam already existed when Uthman bin Affan became caliph, but in ancient times Mid-term replacement (PAW) was carried out with the change of caliph. In choosing leaders,

Islam does not use a political party system, but rather through a system of deliberation, appointing and allegiance to someone in the case of selecting the head of state.

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